IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

WP(C).No. 23680 of 2005(R)

PETITIONER:

G.BRIJEETHAMMA, W/O.LATE G.CLEETUS,
AGED 54 YEARS, SABITHALAYAM, VENGAI P.O.,
SASTHAMCOTTA, KOLLAM DISTRICT.

BY ADV. SRI.V.AJITH NARAYANAN

RESPONDENTS:

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1. **STATE OF KERALA,**
   REPRESENTED BY THE CHIEF SECRETARY,
   GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2. **SECRETARY TO GOVERNMENT,**
   FOREST & WILD LIFE DEPARTMENT,
   GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

3. **THE CHIEF FOREST CONSERVATOR,**
   THIRUVANANTHAPURAM.

4. **THE FOREST CONSERVATOR, KOLLAM.**

5. **THE DIVISIONAL FOREST OFFICER, PUNALUR.**

6. **SECRETARY TO GOVERNMENT,**
   HOME DEPARTMENT, GOVT. SECRETARIAT,
   THIRUVANANTHAPURAM.

7. **C.B.C.I.D CRIME BRANCH OFFICE, KOLLAM.**

8. **THE DIRECTOR, CENTRAL BUREAU OF**
   INVESTIGATION, NEW DELHI.

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI for R8
BY GOVERNMENT PLEADER SRI. BENJAMIN PAUL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.23680/2005 R

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE PAPER REPORT PUBLISHED IN MATHRUBHOOMI DAILY DTD. 10/05/84.

EXT.P2: COPY OF THE CIRCULAR NO.E 8/62611/79 DTD. 7/04/1984 FROM THE OFFICE OF THE CHIEF CONSERVATOR OF FORESTS THIRUVANANTHAPURAM ALONG WITH COPY OF THE GOVT. ORDER G.O.(MS) 414/79/AD DTD. 6/11/1979.

EXT.P3: COPY OF THE LETTER NO.PE2/2105/84 DTD. 24/05/84 FROM THE DIVISIONAL FOREST OFFICER, PUNALUR TO THE CONSERVATOR OF FORESTS, QUILON.

EXT.P4: COPY OF THE NEWS ITEM DTD. 22/04/1988 PUBLISHED IN MALAYALA MANORAMA DAILY WHICH WAS SUBSEQUENTLY TAKEN INTO FILE AS O.P.NO.3795/88 BY THE HON'BLE HIGH COURT OF KERALA.

EXT.P5: COPY OF THE JUDGMENT DTD. 7/02/90 IN O.P.NO.3795/88 BY THE HON'BLE HIGH COURT OF KERALA.

EXT.P6: COPY OF THE REPORT DTD. 8/02/90 PUBLISHED IN INDIAN EXPRESS DAILY.

EXT.P7: COPY OF THE GOVT.ORDER (MS) NO.15/90/FOREST DTD. 24/02/96.

EXT.P8: COPY OF THE ORDER NO.16/90/DTD. 28/02/90 BY THE FOREST CONSERVATOR CENTRAL CIRCLE, TRICHUR – 20.

EXT.P9: COPY OF THE REPRESENTATION DTD. 8/04/90 FROM THE PETITIONER TO THE KERALA LEGISLATIVE SECRETARY.

EXT.P10: COPY OF THE G.O.(MS) NO.41/92/F& WLD DTD. THIRUVANANTHAPURAM 8/10/92.

EXT.P11: COPY OF THE REPRESENTATION DTD.1/1/94 FROM THE PETITIONER TO THE CHIEF MINISTER OF KERALA.

EXT.P12: COPY OF THE LETTER NO.2063/F2/94/FOREST DTD. 11/2/94 FROM THE SECRETARY TO GOVERNMENT, FOREST AND WILD LIFE DEPARTMENT TO THE CHIEF FORET CONSERVATOR, THIRUVANANTHAPURAM.

EXT.P13: COPY OF THE LETTER NO.E2 6582/94 DTD. 24/06/94 FROM THE FOREST CONSERVATOR, KOLLAM TO THE CHIEF FOREST CONSERVATOR, THIRUVANANTHAPURAM.

EXT.P14: COPY OF THE LETTER NO.E7/27996/94 DTD. 22/07/94 FROM THE CHIEF FOREST CONSERVATOR, THIRUVANANTHAPURAM TO THE ADDITIONAL CHIEF SECRETARY, FOREST AND WILD LIFE (F) DEPARTMENT, THIRUVANANTHAPURAM.

EXT.P15: COPY OF THE GOVT. OF KERALA ORDER NO.71565/F3/95/ FOREST DTD. 19/09/95 TO THE PETITIONER.

EXT.P16: COPY OF THE REPRESENTATION DTD. 8/03/96 FROM THE PETITIONER TO THE CHIEF MINISTER OF KERALA.

EXT.P17: COPY OF THE REPRESENTATION DTD. 19/06/97 FROM THE PETITIONER TO THE PRINCIPAL SECRETARY OF FOREST AND WILD LIFE (F) DEPARTMENT.

/TRUE COPY/

P.A.TO JUDGE

KSS

ANTONY DOMINIC,J.

W.P (C) No. 23680 of 2005

Dated this the 10th October, 2007

J U D G M E N T

The prayers in this writ petition are to quash Exhibit P15, to direct respondents 1 to 3 to give ex gratia payment to the petitioner, to give compensation to the petitioner an amount equivalent to the salary of Lower Division Clerk during the period from 7.7.1984 to 7.3.1990 and also to give an additional compensation of Rs.1,00,000/-. Petitioner is also seeking an order directing to hand over the investigation relating to the death of late Sri. G.Cleetus to the Central Board of Investigation.

2. The facts which lead to the writ petition are that the petitioner's husband late Sri.G. Cleetus was a Forest Guard at Ayiranelloor Forest in the Anchal Forest Division. Sri.G. Cleetus met with his death on 6.5.1984 when he was only a probationer. The plight of the petitioner was reported in newspapers and that led to the registration of O.P. No.3795/1988 by this Court. This original petition was disposed of by Exhibit-P5 judgment directing the 1st respondent to appoint the petitioner in an available suitable vacancy or by creating a supernumerary

vacancy. The question of compensating the petitioner for her loss was also directed to be considered. In addition to this, the 1st respondent was also directed to conduct a proper investigation into the death of late Sri.G.Cleetus. In pursuance to Exhibit-P5 judgment referred to above, petitioner was offered employment as Lower Division Clerk and she joined the post on 7.3.1990.

3. However, the petitioner was still aggrieved that she was not compensated for the death of her husband and claimed retrospectivity of her appointment with effect from 7.7.1984 when she had made an application for employment on compassionate ground. She is also aggrieved for non-payment of exgratia compensation and amount due under Exhibit-P10 insurance policy in terms of which she claims to be paid Rs.1,00,000/-

4. Further grievance of the petitioner is that the investigation into the cause of death of her husband was also unsatisfactory. Petitioner even went to the extent of submitting representations to the authorities pointing out the real offenders who are responsible for the death of her

husband. It is now contended that in spite of all these there has not been any progress in the matter.

5. In so far as her claim for ex-gratia payment of Rs.15,000/- is concerned, petitioner raises this claim on the basis of Exhibits P2 and P3. Learned Government Pleader appearing for the respondents do not dispute the eligibility of the petitioner for this claim but only points out that the matter is pending examination of the Conservator of Forests, Kollam and that the petitioner will be paid this amount.

6. The other complaint that requires to be dealt with is the claim of the petitioner for the benefit of the Insurance policy (P10). As already noticed by me the date of death in this case is 6/5/1984. However, the Insurance Company in Ext.P10 is dated 8.10.1992. Thus, it is obvious that the scheme of insurance relied on by the petitioner were introduced much later to the death of her husband. Policy having only prospective coverage, petitioner cannot claim the benefit thereof for the death of her husband which took place long back in 1984.

7. There is a claim for the petitioner that she should be paid a lump sum compensation. This contention of the petitioner is sought to be supported by certain payments which are alleged to have been made in identical circumstances. In paragraph 8 of the Original Petition, the petitioner has made an averment that in identical cases of Sri. O.J. Sebastian, Forest Guard, Punalur Division and Sri.G.Krishnan Nadar, Forest Guard, Vazhachal Division, lump sum compensation was paid. This claim of the petitioner sought to be resisted by the Government Pleader on the basis that petitioner was only a probationer at the relevant time and that in this case, the death occurred only on account of an accident. The fact that the deceased was also a probationer does not in any manner affect the eligibility of the dependants who claim compensation if such claim is otherwise admissible. Further, the petitioner makes reference to Exhibits P12 and P13 recommending payment of compensation to her. In addition to this, she was also made reference to the case of two Forest Guards, viz., Sri. O.J.Sebastian and Sri.G.Krishnan Nadar, whose dependants were compensated adequately despite the fact that

they were similarly situated persons. If is a matter of fact in similar cases compensation has been paid, there is no reason why a different stand is to be taken in the case of the petitioner. However, claim of similarity between the case of the deceased and the cases of Sri. O.J.Sebastian and G.Sri.Krishnan Nadar is a matter to be examined by the respondents themselves.

8. The other prayer made by the petitioner is for reckoning the period from 7.7.1984 to 7.3.1990 as period of service. Now that the petitioner has also retired from service if at all the claim is treated as admissible it can only improve her pensionary benefits. In so far as the aforesaid period between 1984 and 1990 is concerned admittedly petitioner was not in employment. She has no case that there were vacancies available and that despite the vacancies respondents did not appoint her. Apart from that even in Exhibit-P5 judgment in O.P.3795/1988, this Court was cautious enough to direct that if there is no vacancy available petitioner need be accommodated only on a supernumerary basis. Thus, there is no material to indicate that vacancies

existed and that petitioner was not accommodated. If that be so, I find it difficult to enter into a finding that there was any lapse on the part of the respondents in delaying the appointment of the petitioner to make the petitioner eligible to count the period during from 7.7.1984 to 7.3.1990 as service.

9. The other claim raised by the petitioner is for transferring the investigation into the case of death from the CBCID to CBI. Learned Government Pleader read out in extenso the report made available by the investigating officer and his conclusions. A close reading of the report would indicate that there has been a very meaningful investigation conducted and that nothing has been left unturned by the officers of the State Police. In such a situation, in my view there has been a proper investigation and there is nothing warranting yet another investigation at this distance of_time by a third agency.

In the result, I dispose of this writ petition directing that the ex gratia compensation of Rs.15,000/- entitled to the petitioner as per Exhibit-P2 shall be finalised and paid, within a period of two months from the date of receipt of a copy of

this judgment. The respondents will examine whether in identical circumstances payment has been made to the dependants of late Sri. O.J.Sebastian and Sri.G. Krishnan Nadar. In case, if payment has been made to such similarly situated persons, the petitioner should also be paid compensation as paid in the other cases.

(ANTONY DOMINIC, JUDGE)

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K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007